

That the stock of a turnpike company, or of a canal company, must, upon common law principles, be considered as real estate is sufficiently clear; but whether such stock may be extended as such under an *elegit*, or may be sold under a *fieri facias*, is not so certain. In England such stock is commonly declared to be real estate by the Act of incorporation itself; *Powel Mortg.* 24, *note*; but here it has, in several instances, been declared to be personal property. It would seem, that even considered as realty, no lien would attach on obtaining a judgment against the holder unless it could be shewn, that it might be taken in execution; but for that I have met with no authority. If on the other hand such stock should be considered as personalty, then it is clear, even supposing it could be taken in execution, that no lien would arise from the judgment but merely from the execution. *Shaw v. Wright*, 3 *Ves.* 22; *Knapp v. Williams*, 4 *Ves.* 430, *note.* (m) It is, however, certain, that * in all such cases, where this or any other species of property has been fraudulently or unjustly placed beyond the reach of creditors, a Court of equity will interpose and give relief, by setting aside any fraudulent conveyance which may stand in the way; and by ordering the stock to be sold for the benefit of such judgment creditor. *Horn v. Horn*, *Amb.* 79; *Cailaud v. Estwick*, 2 *Anstr.* 381; *Denton v. Livingston*, 9 *John.* 96; *Had-den v. Spader*, 20 *John.* 554. **316**

Besides those embarrassments as to the liability of property to be taken in execution arising out of its nature, considered as real or personal; corporeal or incorporeal, there are others occasioned by the peculiarity of the title to it, or the interest of the party against whom the judgment has been obtained.

A rent seek is a species of realty, and may be, in some sense, regarded as the profits of land; yet since it is intangible, and utterly incapable of any manual seizure, or of being taken into the custody of the sheriff; and as a bare rent cannot be delivered *ut liberum tinementum*, it cannot be taken and sold under a *fieri facias*. *Powel Mortg.* 599, *note W.* The same reason would seem to apply to all mere charges, incumbrances, or beneficial privileges on land. As where a father, by his will, after devising his lands to his sons, gave his daughter the right, privilege and liberty, of residing in the houses and using and cultivating the land in common with his sons, so long as she remained single; *Warfield v. Gambrill*, 1 *G. & J.* 503; or where a testator gave his wife a home

(m) It has been since provided by the Act of 1832, ch. 307, that under a *fieri facias*, or attachment, any interest which the defendant may have in the capital or joint stock of any corporation, or in the debt of any corporation transferable on its books, may be taken and sold in the manner therein prescribed. But whether a lien fastens upon any such property from the date of the judgment or only from the delivery of the *fieri facias* to the sheriff, or otherwise, remains to be determined.